

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

| | | |
|---------------------------|---|--------------------|
| JOHN MOSIER, |) | |
| |) | |
| Petitioner, |) | |
| vs. |) | NO. CIV-05-0120-HE |
| |) | |
| SAM CALBONE and RON WARD, |) | |
| |) | |
| Respondents. |) | |


ORDER

Petitioner John Mosier instituted this action seeking a writ of habeas corpus. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Robert Bacharach, who has issued a Report and Recommendation suggesting that the respondents' request that the petition be dismissed as unexhausted be denied. The respondents have filed an objection, essentially reiterating the arguments presented to the magistrate judge.

Having considered de novo the respondents' contention that the petitioner has failed to exhaust his state remedies, the court concurs with Magistrate Judge Bacharach that the petitioner has "fairly presented his claims to the Oklahoma state courts." Report and Recommendation, p. 2. Accordingly, the court adopts the Report and Recommendation and denies the respondents' request that the habeas petition be dismissed. The matter, including the petitioner's motion for declaratory judgment [Doc.#32], is referred again to Magistrate Judge Bacharach for further proceedings on the merits.

IT IS SO ORDERED.

Dated this 1st day of June, 2005.



JOE HEATON
UNITED STATES DISTRICT JUDGE